



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

FILE:

Office: Miami

Date:

NOV 1 2000

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

Public Copy

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

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**DISCUSSION:** The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(C), 212(a)(2)(D)(i), and 212(a)(2)(D)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(C), 1182(a)(2)(D)(i), and 1182(a)(2)(D)(ii). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

(D) Any alien who--

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution....

The record reflects the following:

1. On June 7, 1983, in Dade County, Florida, [REDACTED] the applicant was arrested and charged with (1) possession of cocaine, (2) obstructing justice by resisting without violence, and (3) trafficking (in a controlled substance). On June 12, 1983, a "no information" was entered on the case.

2. On December 19, 1989, in the Circuit Court of the Eleventh Judicial Circuit, Dade County Florida, [REDACTED] the applicant was indicted for Count 1, keeping a house of ill fame; and Count 2, living off earnings of prostitution. On March 16, 1990, the applicant entered a plea of nolo contendere to both Counts 1 and 2, the court found her guilty as to both counts, adjudication of guilt was withheld, and she was sentenced to one day credit for time served, and fined \$500.

3. On October 18, 1990, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with (1) keeping house of ill fame, (2) deriving support from the proceeds of prostitution; and (3) renting space to be used for lewdness, assignation or prostitution. On November 19, 1990, a "no information" was entered on the case.

4. On December 14, 1993, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with offering to commit or to commit prostitution. On May 3, 1994, the case was dismissed for lack of prosecution.

Despite the fact that the applicant was not convicted of the charges listed in paragraph 1 above, the district director, referring to Matter of Rico, 16 I&N Dec. 181 (BIA 1977), determined that the applicant was inadmissible to the United States pursuant to section 212(a) (2) (C) of the Act because he had reason to believe

the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance.

It has been held in Matter of Rico, supra, that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. There are sufficient facts to support a finding that there is reason to believe the applicant is or has been an illicit trafficker in a controlled substance. The arrest report dated June 7, 1983 reflects that officers, responding to a burglary alarm at the applicant's residence, observed, in plain view in an open dresser drawer, a plastic baggy containing suspect cocaine. The applicant claims that the bedroom (where the cocaine was found) belongs to her. Subsequent to the applicant's arrest, additional baggies and one plastic container containing suspect cocaine were discovered in the same drawer, totaling 109 grams of cocaine. Also found in the applicant's possession is a large number of small plastic envelopes with suspect cocaine.

Generally speaking, intent to distribute is established when the controlled substance is either found on the person of the accused, or in a vehicle or boat driven or occupied by the accused, or in a dwelling where the accused resided or visited frequently. Intent to distribute may also be established by circumstantial evidence. Evidence the defendant possess drugs with the requisite intent to distribute is sufficient as a matter of law, where the drug is packaged in a manner consistent with distribution, and/or there is evidence of distribution paraphernalia, amounts of cash, weapons, or other indicia of narcotics distribution. United States v. Franklin, 728 F.2d 994 (8th Cir. 1984). In the matter at hand, the arrest report shows that the officers found in the applicant's bedroom several baggies and plastic containers, and also found in her possession small plastic envelopes containing cocaine.

The amount of cocaine found, and the fact that they were packaged in a manner consistent with distribution, are reasons to infer that they are for distribution or trafficking. Although the record in this matter indicates that the applicant was not convicted of the charges, there is sufficient, reasonable, substantial, and probative evidence to support the district director's conclusion that there was reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, whether or not she was actually convicted. Matter of Rico, supra. There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act based on trafficking in a controlled substance.

The district director further determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(2)(D)(i) and 212(a)(2)(D)(ii) of the Act based on her arrests and convictions listed on paragraphs 2, 3, and 4 above. The district director reviewed and summarized in his decision the police reports relating to the applicant's arrests on October 18, 1990 for keeping house of ill fame, deriving support from the proceeds of prostitution, and renting space to be used for lewdness, assignation or prostitution; and on December 14, 1993 for offering to commit or to commit prostitution (paragraphs 3 and 4 above). The summarization of the police reports will not be repeated here. Despite the fact that the applicant was not convicted of these charges, a conviction is not required for a finding of inadmissibility pursuant to sections 212(a)(D)(i) and 212(a)(D)(ii) of the Act.

The applicant is, therefore, inadmissible to the United States pursuant to sections 212(a)(D)(i) and 212(a)(D)(ii) of the Act, whether or not she was actually convicted. See Matter of G-, 5 I&N 559 (BIA 1953). The applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on her conviction of keeping a house of ill fame (paragraph 2 above), a crime involving moral turpitude. See Matter of W-, 4 I&N Dec. 401 (C.O. 1951); Matter of A-, 5 I&N Dec. 546 (BIA 1953); Matter of Lambert, 11 I&N Dec. 340 (BIA 1965).

The applicant was offered an opportunity to submit evidence in opposition to the district director's findings of inadmissibility. No additional evidence has been entered into the record. Nor is there evidence that the applicant is the recipient of an approved waiver of such grounds of inadmissibility.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

**ORDER:** The district director's decision is affirmed.